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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MARIA ABRAHIM,  
Plaintiff,

v.

ESIS, INC., ACE AMERICAN  
INSURANCE COMPANY,,

Defendants.

Case No. C07-4014 JCS

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT**

Date: November 9, 2007  
Time: 1:30 p.m.  
Place: Courtroom A, 15<sup>th</sup> Floor  
Judge: Hon. Joseph C. Spero

The parties jointly submit this Case Management Statement pursuant to Civil Local  
Rule 16-10 and this Court's standing orders.

**JURISDICTION, VENUE AND SERVICE:**

This action was brought by Maria Abraham ("plaintiff") against all defendants for

1 termination of employment in violation of public policy and unpaid wages due. This Court's  
 2 jurisdiction is based on 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value  
 3 of \$75,000.00 and is between citizens of different States. No issues are disputed with respect to  
 4 jurisdiction or venue. All parties have been served and have appeared.

5 **PROCEDURAL HISTORY:**

6 The Complaint was filed August 6, 2007. Defendants ESIS, Inc. and Ace American  
 7 Insurance Company were served on August 23, 2007, and their Answers were timely filed on  
 8 September 26, 2007.

9 **STATEMENT OF FACTS:**

10 **Plaintiff's Statement of the Case:**

11 Plaintiff's complaint seeks a judgment that defendants terminated her employment in  
 12 violation of public policy and refused to pay her wages due in violation of California Labor Code.

13 On or about February 23, 2007, after over 16 years of faithful service, plaintiff's  
 14 employment was terminated. Throughout her employment plaintiff performed her duties in a  
 15 satisfactory manner for which she received praise and monetary rewards.

16 The reason given for the termination was that plaintiff refused to accept a demotion to  
 17 a different position which became necessary because a "conflict" had been created when she became  
 18 engaged to a co-employee to whom she reported.

19 Plaintiff contends that defendants violated California Government Code §12940 (a)  
 20 and California Civil Code § 51 in that they unreasonably discriminated against her on the basis of  
 21 marital status and that they enforced their policies in an arbitrary, discriminatory and capricious  
 22 manner, as some select employees with marital status issues were allowed to remain in their  
 23 positions, while others, with similar marital status issues, were either ordered to resign, demoted, or  
 24 terminated.

25 Plaintiff further contends that defendants violated California Labor Code sections 201  
 26 and 2926 when they refused to pay her a bonus which she had earned.

27 **Defendants' Statement of the Case:**

28 Plaintiff was employed by Defendant ESIS as a Claims Manager in its Fremont

Workers Compensation Center. She reported to Gene Petrone, Claim Vice President of the Fremont Workers Compensation Center. In late 2006, Plaintiff and Mr. Petrone announced that they were engaged to be married. This was the first indication anyone in management at ESIS had that the two were involved in any kind of personal relationship. Given the direct reporting relationship between Plaintiff and Mr. Petrone, their personal relationship placed them in violation of Company policy, which generally prohibits individuals “who are related by blood or marriage or [who] have a personal relationship that may pose a conflict of interest” from working within the same “chain-of-command” because the more senior employee could influence the “work responsibilities, salary, career progress, performance assessment or general professional growth” of the less senior employee.

Pursuant to ESIS’ policy, after Plaintiff and Mr. Petrone announced their engagement, the Company asked the couple to decide which one would be vacating their current position. They indicated that Plaintiff would be the one to look for another job. Plaintiff was placed in a temporary position and given special projects to complete while she looked for another position. When she was unable to find one, Plaintiff was offered a lower level claims position that happened to be open. She declined that position, which left Defendant no choice but to terminate her employment.

Defendant denies that Plaintiff is owed any bonus because the bonus program under which she is claiming payment is entirely discretionary.

### **LEGAL ISSUES:**

The parties intend the following items as a preliminary statement of the issues, subject to change as the issues develop and become known to the parties:

1. Whether plaintiff’s claims are subject to binding arbitration in accordance with the terms of ACE’s arbitration policy.
2. Whether defendants terminated plaintiff’s employment in violation of the public policy against marital status discrimination;
3. Whether defendants violated California Labor Code by failing to pay plaintiff her bonus;
4. Whether defendant acted with fraud, oppression or malice, so as to justify an

1 award of punitive damages.

2 **MOTIONS:**

3 Defendants contend that this matter is subject to binding arbitration in accordance  
4 with the terms of defendants' employment dispute arbitration rules and procedures and intend to  
5 petition this Court to compel arbitration. Petition to compel arbitration to be filed by November 16,  
6 2007, with a hearing date to be scheduled for some time on or after January 8, 2008.. Plaintiff  
7 disputes that this matter is subject to binding arbitration.

8 **AMENDMENT OF PLEADINGS:**

9 Not Applicable.

10 **EVIDENCE PRESERVATION:**

11 Defendant has taken appropriate steps to preserve all evidence relating to the decision  
12 to terminate Plaintiff's employment.

13 **DISCLOSURES:**

14 Defendants believe that the parties should defer exchanging initial disclosures until  
15 after Defendant's petition to compel arbitration is resolved. Plaintiff disagrees. Accordingly, the  
16 parties have agreed to seek resolution of this issue from the Court at the Case Management  
17 Conference. If the Court indicates that the parties should proceed with initial disclosures pending  
18 resolution of Defendant's petition to compel arbitration, they will make their disclosures on  
19 November 16, 2007. If the Court indicates that the initial disclosures can be deferred until after the  
20 question of whether this matter should be sent to binding arbitration is resolved, the parties will not  
21 exchange disclosures on that date.

22 **DISCOVERY:**

23 Defendants are of the opinion that discovery should be stayed pending decision on  
24 their petition to compel binding arbitration. If this matter is not sent to binding arbitration,  
25 Defendants do not see any reason to modify the existing discovery limits.

26 Plaintiff estimates 6-10 depositions. These witnesses include present and former  
27 employees of defendants. The information plaintiff deems essential to obtain from defendants are  
28 records indicating how defendants accommodated other employees who were deemed to have

1 created a conflict by virtue of their change of status and/or conduct.

2 **RELATED CASES:**

3 There are no related cases.

4 **RELIEF:**

5 Plaintiff seeks compensatory damages, penalties, punitive damages, attorney fees,  
6 costs and such other and further relief as the court may deem just and proper.

7 Defendants deny the allegations in the complaint and assert affirmative defenses.  
8 Defendants also seek to recover their attorney fees, costs, and such other and further relief as the  
9 court deems proper.

10 **SETTLEMENT AND ADR:**

11 The parties filed a Joint Notice of Need for ADR Phone Conference on October 19,  
12 2007.

13 **CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES:**

14 The parties have consented to have a magistrate judge conduct all further proceedings  
15 including trial and entry of judgment.

16 **NARROWING OF ISSUES:**

17 See Motions section.

18 **PROPOSED DEADLINES AND COURT DATES:**

19 Petition to compel arbitration to be filed by November 16, 2007. If the petition is not  
20 granted, the parties propose that the following deadlines apply:

21 Discovery to be completed by June 30, 2008

22 Dispositive motions heard by August 29, 2008

23 Trial schedule to begin on or after October 31, 2008

24 The parties estimate the length of trial to be two weeks or 10 court days. Plaintiff has  
25 requested a jury trial. Plaintiff expects to have expert witness testimony. Plaintiff approximates 6-  
26 10 witnesses.

27 Defendants are not able to anticipate the number of witnesses and/or experts until  
28 their petition to compel binding arbitration is heard and ruled upon.

1 **DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS:**

2 None.

3 **OTHER MATTERS:**

4 None

5 Dated: November 2, 2007

7 /S/

8 MARLENE S. MURACO

9 LITTLER MENDELSON

A Professional Corporation

Attorneys for Defendants

ESIS, INC., ACE AMERICAN INSURANCE  
COMPANY

12 Dated: November 2, 2007

14 /S/

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